

****E-filed 12/29/11****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOHN GARTH, *et al.*,

No. C 11-00748 RS

Plaintiffs,

**ORDER WITHDRAWING IN PART
PRIOR ORDER OF DISMISSAL AND
REOPENING CASE**

v.

JOHN TENNANT MEMORIAL-
EPISCOPAL SENIOR COMMUNITIES
(JTM-ESC); VINCENT CHEUNG; THE
OAK CENTER TOWERS OFFICE STAFF;
GUARDSMARK SECURITY *and* STAFF;
and DEFENDANT DOES 1-20,

Defendants.

On December 14, 2011, the Court entered an order denying three motions filed by plaintiffs on December 1, 2011, and dismissing the case for failure to prosecute. (Dkt. No. 90) In so doing, the Court noted that plaintiffs' prior complaint was dismissed in its entirety, but with leave to amend, on November 21, 2011. The deadline for amendment was December 8, 2011. Although the order stated that plaintiffs never filed a second amended complaint (SAC), in fact, plaintiffs did file a SAC that was received on December 9. Due to a filing error at the Court, however, the SAC was not docketed until December 22. As a result, the case was wrongly dismissed for failure to prosecute.

In light of plaintiffs' *pro se* status, and the fact that their SAC was received only one day late, the Court hereby withdraws, in part, its December 14 order of dismissal for failure to prosecute,

No. C 11-0748 RS
ORDER

1 directs the Clerk to reopen the case, and recognizes the SAC as the legally effective pleading in this
2 case. However, the December 14 order remains in force to the extent it properly denied plaintiffs'
3 three motions because: (1) at the time they were filed on December 1, there was no operative
4 complaint, and (2) all three motions lacked legal and factual support. Defendants are instructed to
5 answer or otherwise respond to plaintiffs' SAC within 21 days of this order.

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7 IT IS SO ORDERED.

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9 Dated: 12/29/11



10 RICHARD SEEBORG
11 UNITED STATES DISTRICT JUDGE
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